

# **EXHIBIT 4**

## **State Plaintiffs' Position Statement Regarding Protective Order and ESI Protocol (ECF No. 478)**

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11  
12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
14 OAKLAND DIVISION

15  
16 IN RE: SOCIAL MEDIA ADOLESCENT  
17 ADDICTION/PERSONAL INJURY  
PRODUCTS LIABILITY LITIGATION  
18  
19 THIS DOCUMENT RELATES TO ALL  
MATTERS

MDL No. 3047

Case No. 4:22-md-03047-YGR

**STATE PLAINTIFFS' POSITION  
STATEMENT REGARDING  
PROTECTIVE ORDER AND ESI  
PROTOCOL**

Honorable Yvonne Gonzalez Rogers  
Honorable Peter H. Kang

Action Filed: 10/24/2023

## POSITION STATEMENT

### I. BRIEF BACKGROUND

On October 24, 2023, thirty-three states (States) filed a joint civil law-enforcement action against the Meta Defendants (Meta) in this MDL; eight additional states<sup>1</sup> filed separate complaints against Meta in their respective state courts; and Florida sued Meta in federal court in Florida (which has since been conditionally transferred to this Court). The States assert causes of action under the federal Children’s Online Privacy Protection Act, as well as their respective state consumer protection laws governing unfair, deceptive, and abusive acts or practices.

Because the States are relative newcomers to this MDL, their position has not yet been heard on the discovery matters that have been briefed by the MDL Personal Injury and Local Government Plaintiffs and Defendants. Accordingly, the States respectfully submit this position statement regarding two issues already briefed.

### II. EXPERT DISCLOSURE PROVISIONS IN PROTECTIVE ORDER

The States join the Personal Injury and Local Government Plaintiffs’ opposition (Dkt. 303) to the expert provisions in Section 7.6 of the Protective Order (Dkt. 290), which would impose new and onerous disclosure obligations, burdening the States’ ability to provide certain materials to retained consultants and experts. Meta cannot establish that good cause exists for imposing these obligations on the States to avoid any specific prejudice or harm to Meta. *See, e.g., Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th Cir. 2002) (“For good cause to exist, the party seeking protection bears the burden of showing specific prejudice or harm will result if no protective order is granted.”) (citation omitted).

There is no specific prejudice or harm that these provisions avoid, as highlighted by past conduct between the States and Meta. Section 7.6 of the Protective Order significantly departs from the confidentiality agreement that the States negotiated with Meta Platforms, Inc. and have operated under for the past 18 months without any issues or objection from Meta. That agreement does not impose tiered levels of confidentiality designations. Nor does it impose any disclosure or

<sup>1</sup> The District of Columbia, Massachusetts, Mississippi, New Hampshire, Oklahoma, Tennessee, Utah, and Vermont filed lawsuits alleging state consumer protection law violations in their respective state courts.

1 notice obligations on the States limiting their discretion in retaining or consulting with experts.  
2 The agreement reasonably and appropriately requires only that any consultants and experts  
3 assisting the States agree in writing to keep information confidential to the same extent as  
4 required by the confidentiality agreement. This regime has been acceptable to Meta during the  
5 course of the States’ investigation, and there is no reason to now impose new, unnecessary expert  
6 obligations on the States.

7 Moreover, Defendants have not and cannot meet their burden to show good cause to impose  
8 the expert provisions in Section 7.6 on the States. The documents and information previously  
9 produced by Meta to the States during their investigation are governed by the less restrictive and  
10 less onerous confidentiality agreement. None of those materials required heightened protections  
11 described in Section 7.6. Meta has not identified what type of “trade secret or other confidential  
12 research, development, or commercial information,” Fed. R. Civ. P. 26(c)(1)(G), it expects to  
13 produce in this litigation going forward that it has not already produced, and that would justify the  
14 stringent restrictions imposed by Section 7.6.

15 In fact, these restrictions would work particular harm and prejudice to the States by  
16 disrupting ongoing engagements with consultants who were retained under different terms,  
17 should the States need to share with them material newly produced in the MDL and designated  
18 “highly confidential.” Further, the broad term “consultant,” used throughout the Protective Order,  
19 could be interpreted to encompass Meta’s former employees. If so, this could chill the  
20 cooperation of these individuals by jeopardizing their anonymity and compromise critical law-  
21 enforcement relationships.

22 The States respectfully request that the Court remove the expert disclosure obligation  
23 imposed by Section 7.6, and revisit the issue at a later date in the event that Meta is able to  
24 identify and establish that *specific* materials require heightened protection. *See, e.g., Foltz v. State*  
25 *Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir. 2003) (“A party asserting good cause [for  
26 a protective order] bears the burden, for each particular document it seeks to protect, of showing  
27 that specific prejudice or harm will result if no protective order is granted.”).  
28

### III. ESI PROTOCOL

First, the States join the Personal Injury and Local Government Plaintiffs’ position regarding hyperlinked content described in the Joint Statement Regarding ESI Protocol (Dkt. 352). In addition to the arguments raised by the Personal Injury and Local Government Plaintiffs, Defendants’ proposal requiring a showing of good cause for the production of individual hyperlinked attachments would be highly inefficient. Such a process could inject delay and the need for intervention from the Magistrate Judge to resolve any disputes that might arise between the parties.

Second, the States, like the MDL Personal Injury and Local Government Plaintiffs, oppose the inclusion of Section 15 in Defendants' proposed order governing ESI (Dkt. 352). Defendants' Section 15 provides that activities undertaken in compliance with the duty to preserve information are protected from discovery under Rules 26(b)(3)(A) and (B) of the Federal Rules of Civil Procedure, which protects trial preparation materials from discovery. As drafted, this Section could inadvertently and inappropriately protect information related to possible spoliation misconduct. The States oppose such a carveout.

Dated: December 13, 2023

Respectfully submitted,

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**ATTESTATION**

I hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

DATED: December 13, 2023

By: /s/ Bernard Eskandari

Bernard Eskandari

**CERTIFICATE OF SERVICE**

I hereby certify that on December 13, 2023, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system.

DATED: December 13, 2023

By: /s/ Bernard Eskandari

Bernard Eskandari